



7040-01

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 801

General Policies

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking; notice of public hearing.

SUMMARY: This document contains proposed rules that would codify in the regulations and strengthen the Susquehanna River Basin Commission's (Commission) Access to Records Policy providing rules and procedures for the public to request and receive the Commission's public records.

DATES: Comments on the proposed rulemaking may be submitted to the Commission on or before November 13, 2017. The Commission has scheduled a public hearing on the proposed rulemaking on November 2, 2017, 2:30 p.m. to 5 p.m. or at the conclusion of public testimony, whichever is sooner.

ADDRESSES: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net. The public hearing is located in Harrisburg, Pennsylvania, State Capitol (East Wing, Room 8E-B), Commonwealth Avenue, Harrisburg, PA 17120.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; e-mail:

joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: The Commission has long made its records available to the public but it has never formalized its open records policy in regulation. The Commission first promulgated its "Freedom of Information Policy" on January 11, 1979. As an interstate compact agency, no single member jurisdiction may subject the Commission to its open records law. *See C.T. Hellmuth & Associates v. Washington Metropolitan Area Transit Authority*, 414 F. Supp. 408 (D. Md. 1976) (holding that Maryland could not unilaterally subject transit authority to the provision of the Maryland Public Information Act). In recognition of this limitation, the Commission developed its policy "in line with Freedom of Information legislation enacted by all four signatory jurisdictions." *See* Minutes of Commission Meeting (Jan. 11, 1979). As noted in the January 11, 1979, meeting minutes of the Commission, the Policy "merely formalized the current Commission practice of making its records available to the furthest extent possible."

The Commission updated its open records policy on September 10, 2009, by adopting its "Access to Records Policy," Policy No. 2009-02 on September 10, 2009. This policy replaced the 1979 Freedom of Information Policy. The updated policy reflected the practice of the Commission's member jurisdictions, recognized records in electronic format as being subject to public access and added a formal procedure for the protection of confidential information submitted by project sponsors and a procedure for the public to challenge the designation of this information as confidential. This revised policy also provided that the Commission "will endeavor to make as much information as

possible available on its website..., in an effort to eliminate the need for many records requests.” For example, the Commission provides all of its approved dockets on its website, as well as information summaries for each docket or project application pending before the Commission, policies, reports, publications and data from its water quality monitoring programs.

The Commission believes the results of this policy have been successful. From 2012 through 2016, the Commission provided records to 152 distinct records requests in writing for documents data or information, as well as innumerable informal requests. The Commission website has been a well-used public resource and repository for records. In the past 12 months, the Commission website has received 121,213 visits from 26,522 unique visitors. The Commission Water Application and Approval Viewer, where the public can view Commission dockets and pending application information, was recently upgraded to increase its functionality and ease of use and received 16,593 unique page views over the past 12 months. Similarly, the Commission water quality network data landing page received 9,904 unique page views over this same time period.

The Commission wishes to continue this long tradition of transparency by further formalizing the key elements of its Access to Records Policy in duly promulgated regulations. The Commission is not looking to replace the policy, but rather to memorialize the key tenets of the policy in regulation. Through this action, the Commission will be codifying its commitment to public access to records in a way that imbues them with the status of law that can be enforceable against the Commission.

The Commission’s 2009 Access to Records Policy can be found at:

http://www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.

The Commission's current records processing fee schedule can be found at:

<http://www.srbc.net/pubinfo/docs/RecordsProcessingFeeScheduleUpdatedAddress.pdf>.

List of Subjects in 18 CFR Part 801

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 801 as follows:

PART 801—GENERAL POLICIES

1. The authority citation for part 801 is revised to read as follows:

Authority: Secs. 3.1, 3.4, 3.5(1), 15.1 and 15.2, Pub. L. 91-575 (84 Stat. 1509 *et seq.*)

2. Add § 801.14 to read as follows:

§ 801.14 Public access to records.

(a) *Purpose.* The Commission, as an independent compact agency, is not subject to any of its member jurisdictions' laws regarding public access to records. Nevertheless, the Commission wishes to assure, to the maximum extent practicable, the availability of Commission records consistent with the Susquehanna River Basin Compact. The Commission shall maintain an "Access to Records Policy" that outlines the details and procedures related to public access to the Commission's records. Any revisions to this policy shall be consistent with this section and undertaken in accordance with appropriate public notice and comment consistent with requirements of 18 CFR 808.1.

(b) *Scope.* This section shall apply to all recorded information, regardless of whether the information exists in written or electronic format. There is a strong presumption that records shall be public, except where considerations of privacy, confidentiality, and security must be considered and require thoughtful balancing. The Commission shall identify types of records that are not subject to public access, including but not limited to:

- (1) Personnel or employment records;
- (2) Trade secrets, copyrighted material, or any other confidential business information;
- (3) Records exempted from disclosure by statute, regulation, court order, or recognized privilege;
- (4) Records reflecting internal pre-decisional deliberations;
- (5) Records reflecting employee medical information, evaluations, tests or other identifiable health information;
- (6) Records reflecting employee personal information, such as social security number, driver's license number, personal financial information, home addresses, home or personal cellular numbers, confidential personal information, spouse names, marital status or dependent information;
- (7) Investigatory or enforcement records that would interfere with active enforcement proceedings or individual due process rights, disclose the identity of public complainants or confidential sources or investigative techniques or endanger the life or safety of Commission personnel; or
- (8) Records related to emergency procedures, facilities or critical infrastructure.

(c) *Procedures.* The Access to Records Policy will detail the necessary procedures for requesting records and processing records requests:

- (1) Requests shall be in writing and shall be reasonably specific;
- (2) The Commission shall identify an Access to Records Officer to handle requests;
- (3) The Commission shall respond to a records request within a reasonable time and in consideration of available resources and the nature of the request;
- (4) The Commission shall not be required to create a record that does not already exist, or to compile, maintain, format or organize a public record in a manner in which the Commission does not currently do so;
- (5) A procedure shall be identified for electronic transfer, copying or otherwise providing records in a manner that maintains the integrity of the Commission's files; and
- (6) A procedure shall be identified for handling review of requests that seek access to information that has been identified as confidential and for notifying the person(s) who submitted the confidential information that it is subject to a records request.

(d) *Fees.* The Commission shall adopt and maintain a "Records Processing Fee Schedule." The fees shall be calculated to reflect the actual costs to the Commission for processing records requests and may include the costs of reproducing records and the cost to search, prepare and/or redact records for extraordinary requests.

(e) *Appeals.* Any person aggrieved by a Commission action on a records request shall have 30 days to appeal a decision in accordance with 18 CFR 808.2.

Dated: October 5, 2017.

Stephanie L. Richardson
Secretary to the Commission.

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